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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARSH FRANCIS BALDWIN,

Defendant and Appellant.

E034860

(Super.Ct.No. SWF2287)

OPINION

APPEAL from the Superior Court of Riverside County. Ronald R. Heumann,  
Judge. Reversed in part, affirmed in part and remanded for resentencing.

Torres & Torres and Steven A. Torres, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Gary W. Schons, Senior Assistant Attorney General, Anthony Da Silva, and  
Arlene Aquintey Sevidal, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant appeals from convictions for receiving stolen property (Pen. Code, § 496)<sup>1</sup> and possession of an unfinished check with intent to defraud (§ 475, subd. (b)). He was sentenced to a total of three years in state prison. On appeal he contends that the court erred in sentencing him to concurrent terms on the two charges and that the evidence is insufficient to support the check charge.

We find the evidence is insufficient to support the intent element of the check charge and reverse the judgment as to count 2. The People concede the sentencing issue; however, our reversal of count 2 effectively renders the sentencing issue moot. The judgment is otherwise affirmed.

### **FACTS**

On the evening of October 26, 2002, the victim drove home and parked her car. She left her purse inside. The next day she went to the car and found the window smashed and her purse gone. Stolen were a number of items including some blank checks and one which she had signed and then voided. Some of the other stolen items included membership cards and library cards bearing her name, her social security card, a scuba certification card with her name, a deposit record from the Bank of America, and a withdrawal slip from a credit union different from the bank that issued her blank checks. She never gave defendant permission to possess any of the items taken from her car.

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<sup>1</sup> All further statutory references are to this code unless otherwise stated.

Nearly three weeks later, on November 15, 2002, a police officer was on patrol in Murrieta. Around 2:00 a.m., he spotted defendant's car near a Blockbuster Video store. Because there had been recent burglaries at video stores, he was suspicious.

He investigated and found the defendant near a dumpster. The defendant stated that he was looking for discarded video cases. The officer asked for permission to search defendant's car, and the defendant agreed.

The car was older and messy inside. The officer found an envelope on the floorboard behind the front passenger seat. Inside the envelope were numerous items, as indicated above, with the victim's name on them along with the blank and voided checks that had been in the purse at the time of the car burglary. Not all of the items that were taken during the car burglary, such as an automated teller machine card which had been used right after the theft to buy gas, were recovered from defendant's car. At trial, the victim identified all of the recovered items as having been stolen from her car.

At the scene, the officer inquired about the recovered items, and the defendant said that the items belonged to a friend of his and his wife. They were going to return them to her.

The officer then called the victim. She denied knowing the defendant or his wife. The defendant then changed his story and said that at a car wash his sons were playing in the trash and may have placed the stolen items in the car. Later, he said that the items could have been in the car when he purchased it out of impound.

The defendant did not testify at trial. The only witness called by the defense was a clerk from the Blockbuster Video store who testified that the defendant had asked for, and was given, permission at one time to take used video cases from the trash bin.

## **DISCUSSION**

*a.     The Evidence is Insufficient to Prove the Intent Element of Section 475, Subdivision (b).*

Section 475, subdivision (b) punishes as a felony the possession of a blank or unfinished check with the intention of completing it, or facilitating the completion of it in order to defraud any person.

Normally, intent, in the absence of a statement of intent from a defendant, is proved by the circumstantial evidence surrounding the possession of the check. Here there is no evidence to support the required intent of the statute. Certainly, evidence that defendant told three different stories concerning how he acquired the victim's property supports the element of knowledge of the stolen character of the property necessary to sustain a conviction for receiving stolen property, but it is not helpful in establishing the element of specific intent to complete the check and defraud required by the statute.

Reviewing the record in a light most favorable to the judgment (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054), there is no other evidence in the record to establish the intent to complete the check and the intent to defraud. The sole case relied upon by the People, *People v. Norwood* (1972) 26 Cal.App.3d 148, is factually distinguishable and inapposite. In *Norwood*, the defendant was charged with a slightly different crime, fraudulent possession of a completed check with intent to defraud in violation of section

475, subdivision (a). There one of the county warrants made out to one of the victims was never endorsed by the victim but bore an endorsement in his name. There was a traveler's check that bore a countersignature that was not the lawful possessor's signature. The warrants and traveler's check were found in a car. The defendant denied touching or possession of the checks in question, but his fingerprint was lifted from one of them. The *Norwood* case addresses a different crime, and in any event there was other circumstantial evidence, beyond mere possession, to support the specific intent element of the crime. Such evidence is simply not present in the instant case.

None of the checks were in any different condition than when they were stolen. No one had completed them or ever tried to pass any of the victim's stolen checks. There is no evidence that the defendant, or anyone else, had attempted to do anything with them. Possession of unaltered stolen checks, by itself, is not made a strict liability crime under the statute. Mere possession of the *unaltered* blank checks, without more, is insufficient to establish the intent to complete and defraud as required by the statute. (*People v. Norwood, supra*, 26 Cal.App.3d at p. 159.) Evidence that merely raises a suspicion or leads only to conjecture and speculation is insufficient to support a conviction. (*People v. Anderson* (1968) 70 Cal.2d 15, 25.)

*b.     The Alleged Section 654 Error.*

Section 654 permits multiple convictions but not multiple sentences where the crimes are part of an indivisible course of conduct with but a single intent. (*People v. Hicks* (1993) 6 Cal.4th 784, 788-789.) The People concede that there are two related crimes that are part of an indivisible course of conduct. Therefore, the court could not

sentence concurrently on both crimes even though concurrent sentencing did not add any additional time to the sentence. (*Id.* at p. 791.) Where section 654 applies, a court may not impose concurrent sentences but rather should stay imposition of sentence on one of the counts. (*People v. Monarrez* (1998) 66 Cal.App.4th 710, 713.)

While we question the concession because arguably there are different intents and objectives in the commission of the two crimes, we need not address the issue because our reversal of count 2 effectively moots the issue since there is now only one count remaining that defendant may be sentenced on.

### **DISPOSITION**

The conviction as to count 2 is reversed. The judgment in all other respects is affirmed. While the reversal as to count 2, as a practical matter, does not change the length of the sentence, the case is remanded for resentencing.

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/s/ McKinster  
Acting P.J.

We concur:

/s/ Richli  
J.

/s/ Ward  
J.